93-499

Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1993

CARL TAYLOR, SR., *Petitioner,*

v.

CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND AND THE TRUSTEES THEREOF, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

AND APPENDIX

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22 pp

QUESTION PRESENTED FOR REVIEW

DID THE U.S. DISTRICT COURT AND THE COURT OF APPEALS ERR IN GRANTING RESPONDENTS A DISMISSAL ON THE MERITS WHEN THERE REMAIN GENUINE ISSUES OF MATERIAL FACT?

LIST OF PARTIES

The petitioner is Carl Taylor, Sr. The respondents are the Central States, Southeast and Southwest Areas Pension Fund and the trustees thereof.

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CARL TAYLOR, SR., *Petitioner,*

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CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND AND THE TRUSTEES THEREOF,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

OPINIONS BELOW

The relevant opinion of the United States District Court, and the order of the United States Court of Appeals for the Sixth Circuit are reproduced in the Appendix beginning at p. A-1.

JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

This petition is filed within 90 days of the United States Court of Appeals' order affirming the district court's grant of summary judgment, issued on June 3, 1993.

STATUTES INVOLVED

Petitioner, Carl Taylor, Sr., claims pension benefits pursuant to the civil enforcement section of ERISA

(§ 502 of ERISA, 29 U.S.C. § 1132). Respondent, Central States, Southeast and Southwest Areas Pension Plan, is an Employee Pension Benefit Plan as defined by ERISA, § 3(2)(A), 29 U.S.C. § 1002(2)(A), subject to regulation by ERISA.

STATEMENT OF THE CASE

The petitioner brought an action against the respondents pursuant to § 502 (a)(1)(B) of ERISA, the Employee Retirement Income Security Act as amended, 29 U.S.C. § 2243(a)(1)(B) after he was denied a pension although he had worked as a Teamster for more than twenty years. The petitioner alleged that the respondents made the decision to deny him a pension based upon incompetent and unsubstantiated evidence and that their actions in denying the pension were arbitrary and capricious. The action which was filed on October 27, 1988 alleged that as of November 15, 1985, the petitioner had met all of the prerequisites to qualify for a benefit from the Pension fund, but was denied those benefits. The parties stipulated to an order of dismissal on September 5, 1989 and a rehearing before the respondent trustees "for a full *de novo* rehearing on the issue of plaintiff's entitlement to pension benefits."

After the *de novo* hearing, the respondents again denied the petitioner a pension alleging that the petitioner did not provide adequate support for his contention that he was entitled to benefits. In denying the petitioner his benefits, the respondents declined to give credibility to any of the numerous simple affidavits that contributions had been made on petitioner's behalf. The trustees instead relied upon a deposition of the petitioner's wife which a United States magistrate had ruled that the use of demonstrated the arbitrary and capricious nature of their actions.

The action was reinstated on February 25, 1991. On May 10, 1992, respondents filed a motion for summary judgment. The district court granted the respondents' motion for summary judgment finding that there were no issues of material fact. The district court found that the respondents' actions were not arbitrary and capricious "(e)ven if the trustees improperly relied on the deposition to deny benefits." (Order Granting Defendants' May 10, 1991 Motion for Summary Judgment, p. A-9).

The court of appeals affirmed the district court's order granting summary judgment to respondents.

REASON FOR GRANTING THE WRIT

Certiorari should be granted to review the decision of the district court and the court of appeals because the petitioner was denied his day in court. By deciding that the actions of the respondents were not arbitrary and capricious without a trial, the district court grants the petitioner merely an appellate review rather than a trial to prove his allegations on the merits. The petitioner was never permitted to bring in witnesses to testify and substantiate his claim to a pension. The petitioner provided elementary affidavits which corroborated his claim to pension benefits in the *de novo* hearing before the respondents. The respondents found them without credibility, instead relying upon an illegally taken and unsubstantiated deposition of the petitioner's wife. The actions of the respondents were arbitrary and capricious.

THIS WRIT MUST BE GRANTED AS THE COURTS BELOW HAVE ABUSED THEIR DISCRETION BY GRANTING SUMMARY JUDGMENT ON THE MERITS WHEN THERE REMAINS A GENUINE ISSUE OF MATERIAL FACT

The trial court abused its discretion in granting respondents summary judgment because there remain

genuine issues of material fact. The petitioner applied for a pension from the respondents after over twenty (20) years working as a Teamster driver. The respondents denied the petitioner a pension initially by relying upon an illegally taken, incompetent, unsubstantiated deposition of the petitioner's wife two years prior to petitioner's application for benefits. The petitioner brought an action in United States District Court pursuant to § 502 (a)(1)(B) of ERISA, the Employee Retirement Income Security Act as amended, 29 U.S.C. § 2243 (a)(1)(B) which permits a civil action to recover benefits due under the terms of a plan subject to ERISA. That action was dismissed and the petitioner was granted a *de novo* hearing before the respondents. The petitioner submitted evidence to the respondents which would have entitled him to a minimum 20 year pension. The respondents, nonetheless, denied the pension benefit a second time by arbitrarily and capriciously deciding that affidavits provided by the petitioner were not sufficiently credible and relying on one unsubstantiated deposition of the petitioner's wife.

Issues of fact remain in the case as the petitioner provided affidavits which supported his contention that he was entitled to a full twenty-year pension. Respondents allege that the petitioner is not entitled to a pension because he did not work the requisite number of years. The petitioner alleges that he worked for over twenty-seven (27) continuous years as a Teamster.

By granting summary judgment the petitioner was denied a trial in a federal court. Under these circumstances the petitioner's right to bring an action in federal court is nothing more than a right to an appellate review. The petitioner is a simple man who is fundamentally entitled to a trial on the merits rather than being summarily dismissed.

RELIEF REQUESTED

Petitioner respectfully requests that this Court grant certiorari to review the judgment of the district court as allowed to stand by the court of appeals.

Respectfully submitted,

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DATED: September 1, 1993

APPENDIX TO PETITION FOR CERTIORARI

• • •

OPINION

(United States Court of Appeals — Sixth Circuit)

(Issued June 3, 1993)

(CARL TAYLOR, SR., Plaintiff-Appe''ant, v. CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND AND THE TRUSTEES THEREOF, Defendants-Appellees — No. 92-1350; ON APPEAL from the United States District Court for the Eastern District of Michigan)

BEFORE: MERRITT, Chief Judge;
JONES and NELSON, Circuit Judges.

MERRITT, Chief Judge.

Plaintiff Carl Taylor appeals from a summary judgment upholding the denial of his claim for pension benefits by the Trustees of Central States, Southeast and Southwest Areas Pension Fund ("Fund"), pursuant to Section 502(a)(1)(B) of the Employee Retirement Income Security Act ("ERISA") 29 U.S.C. section 1132(a)(1)(B). The trustees denied his claim for benefits after determining that he lacked the contractually required ten years of contributions to the fund. The Supreme Court held in *Firestone Tire and Rubber Co.* v. *Bruch*, 489 U.S. 101 (1989) "that a denial of benefits challenged under section 1132(a)(1)(B) is to be reviewed under a *de novo* standard *unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan.*" *Id.* at 115 (emphasis added). The parties agree that the Trustees were given this discretion by the terms of the Central States Fund, so the arbitrary

and capricious standard of review is applicable to their decision. Because the record clearly supports the decision that Mr. Taylor had fewer than ten years of contributions, we affirm the grant of summary judgment.

I.

The Fund is administered by an equal number of employers and employees of the teamster industry appointed by the Board of Trustees. The fund provides pension benefits for teamster employees working under collective bargaining agreements that require their employers to contribute to the fund. Mr. Taylor applied to the fund for benefits on September 24, 1985. His application listed all of his employers from 1948 until 1985.

Article IV, Sec. 4.01(a) of the Plan outlines the eligibility requirements for receipt of the "Twenty-Year Service Pension":

> (a) To become eligible for the Twenty-Year Service Pension, an Active Participant must meet each of the following requirements at the time he stops working in Covered Service or becomes an Inactive Participant:
>
> (1) he must have reached at least his 57th birthday; and
>
> (2) he must have at least 20 years of Service Credit; and
>
> (3) he must have met the Minimum Contribution Requirement.

The "minimum contribution requirement" for Mr. Taylor was ten years of "contributory service," i.e., years in which contributions were made on his behalf.

During the initial processing of his application, the pension fund staff determined that their records showed only 7.675 years of contributions to the fund on Mr. Taylor's behalf. The Trustees reviewed Mr. Taylor's application for the first time on July, 16, 1986. They agreed with the staff findings. The Trustees notified Mr. Taylor that his application had been denied.

In October, 1988, Mr. Taylor filed suit in federal court, claiming that he was improperly denied benefits. He charged a number of errors by the trustees, but we limit our discussion to a review of his dispositive claim that in addition to the 7.675 years of contributions from C.R. Taylor, contributions were made by other employers which would have given him more than 10 years of contributory service.[1] Mr. Taylor claimed that the failure to fully inquire about other contributions rendered the Trustees' decision arbitrary and capricious.

After some preliminary decisions by the district court, the parties stipulated to a voluntary dismissal of the complaint without prejudice on the condition that the Trustees would conduct a *de novo* review of Mr. Taylor's application. The Trustees conducted this review on August 30, 1990. They reviewed all of Mr. Taylor's allegations from his complaint. They checked the funds records as well as those of the Social Security Administration in order to determine Mr. Taylor's union and employment status for all of the years of service

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[1] **In addition to the 7.675 years of contributions made by C.R. Taylor, plaintiff claims that the following contributions were made or should have been made on his behalf.**

(1) 6.5 years of contributions by Rettberg, Inc. from 1965 to 1971.

(2) 1.5 years of contributions by Sumark Sand, Inc. from 1964 to 1965.

(3) 5 years of contributions by C.R. Taylor from 1958 to 1963.

claimed on his application. They also examined the evidence submitted by Mr. Taylor, primarily in the form of affidavits. The Trustees determined that the evidence as a whole supported their earlier finding that Mr. Taylor was not entitled to the pension. The Trustees issued an eleven page report of the minutes of the meeting where Mr. Taylor's case was considered with detailed explanations of their decision with respect to each question of fact.

Mr. Taylor was notified that his application had been denied again. He then petitioned the district court to reinstate his complaint. This motion was granted by order on February 25, 1991. The district court granted summary judgment in favor of the fund on February 3, 1992. This appeal followed.

II.

We review the grant of summary judgment *de novo* applying the same "arbitrary and capricious" standard as the lower court. *See, E.E.O.C.* v. *University of Detroit,* 904 F.2d 331 (6th Cir. 1990). The Central States plan clearly vests discretionary authority in the trustees. Article IV. Sec. 17 provides: "The Trustees are vested with discretionary and final authority in construing plan documents of the Pension Fund." We are only concerned then with whether material issues of fact remain which if resolved in plaintiff's favor would indicate that the Trustees' decision was arbitrary and capricious. *Miller* v. *Metropolitan Life Ins. Co.,* 925 F.2d 979, 984 (6th Cir. 1991). If not the Trustees are entitled to judgment as a matter of law.

Mr. Taylor fails to satisfy his burden with respect to the Trustees' decision that he had fewer than ten years of contributory service because his evidence disputing this finding does not indicate that the Trustees' decision

was arbitrary and capricious. He argues that the affidavit of Ingeburg M. Rettberg establishes that contributions were made for him by Rettberg, Inc. and Sumark Sand from 1964 to 1971. The Trustees considered this affidavit and were unpersuaded. They note that Mr. Rettberg offered no documentation with this affidavit, nor did he state the basis of his knowledge. The fund records showed that contributions were made on Mr. Taylor's behalf but only to the related health and welfare fund, not to the pension fund. The conclusion by the Trustees that their records were more reliable than Mr. Rettberg's memory does not appear arbitrary and capricious. The only other affidavits offered to support Mr. Taylor's claim that other contributions were made were offered on information and belief. No documentation was offered to counter the plan's records.

III.

Viewing the evidence in the light most favorable to the plaintiff Mr. Taylor has made no showing and raised no issue of fact indicating that more than 7.675 years of contributions were made. Therefore, we AFFIRM the district court's grant of summary judgment for the defendants.

ISSUED AS MANDATE: 6-25-93
COSTS: NONE

ORDER GRANTING DEFENDANTS' MAY 10, 1991 MOTION FOR SUMMARY JUDGMENT

(United States District Court —
Eastern District of Michigan —
Southern Division)

(Dated February 3, 1992)

(CARL TAYLOR, SR., Plaintiff, v. CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND AND THE TRUSTEES THEREOF, Defendants — CIVIL ACTION NO. 88-74360; HONORABLE PAUL V. GADOLA, U.S. DISTRICT JUDGE)

On October 27, 1988, plaintiff Taylor file a complaint against Central States, Southeast and Southwest Areas Pension Fund and the trustees therof ("Central States" or the "Pension Fund"). The complaint alleged claims under the civil enforcement section of the Employee Retirement Income Security Act ("ERISA") section 502(a)(1)(B), 29 U.S.C. section 1132 (a)(1)(B). Plaintiff alleged that as of November 15, 1985, he met all the prerequisites to qualify for a benefit from the Pension Fund but was, nonetheless, denied those benefits. After various proceedings, this court entered an order of dismissal September 5, 1989, and remanded the matter to the board of trustees of defendant Central States "for a full *de novo* rehearing on the issue of plaintiff's entitlement to pension benefits."

The trustees provided a *de novo* rehearing and the plaintiff, accompanied by counsel, appeared before the board on July 16, 1990. On August 30, 1990, the trustees again denied plaintiff's claim. Plaintiff's December 18, 1990 motion to reinstate the case was granted February 25, 1991. On May 10, 1991, defendants filed the instant motion for summary judgment. Plaintiff filed a response January 7, 1992; and defendants filed a reply January 21,

1992. In a March 12, 1991 status conference the parties stipulated to have dispositive motions decided on the briefs. Thus, no oral argument was heard.

BACKGROUND FACTS

Defendant Central States is a Taft-Hartley Trust administered by a board of trustees. Pursuant to the authority granted by the Pension Fund Trust Agreement, the trustees have established a pension plan. The plan provides retirement pensions to employees who have worked in the Teamster industry through collective bargaining agreements that require employers to make contributions to the Pension Fund on behalf of the employees. Because it fits the definition of an employee pension benefit plan under ERISA Section 3(2)(A), 29 U.S.C. SECTION 1002(2)(A), Central States is subject to ERISA regulations.

Plaintiff Carl Taylor, Sr., is a citizen of the state of Michigan who worked as a truck driver for various employers in the Detroit area. He is seeking review of Central State's denial of his claim for a 20-year retirement pension.

APPLICABLE LAW

The parties agree that defendant trustees, as fiduciaries of the Pension Fund, were vested with discretion to construe the terms of the benefit plan. Motion at 11-14; resp. at 3-4. *Thus, the court must use the "arbitrary and capricious" standard in reviewing defendants' decision to deny the claimed pension. Firestone Tire and Rubber Co.* v. *Bruch*, 489 U.S. 101 (1989). The Court of Appeals for the Sixth Circuit has determined that a decision is not arbitrary or capricious if evidence in the record reflects a reasonable explanation for the decision. *Davis* v.

Kentucky Fin. Co.'s Retirement Plan, 887 F.2d 689, 693-95 (6th Cir. 1989).

ANALYSIS

It is undisputed that in order to qualify for the benefits he is seeking plaintiff needed 20 years of service credit, including at least 10 years of contributory service. The first time the defendant trustees reviewed plaintiff's application they determined that he was not entitled to the pension benefits because during the 7.625 years he claimed for employment at C.R. Taylor, Inc., plaintiff worked in a supervisory capacity, not as an employee as that term is defined in the parties' agreement.

After the *de novo* rehearing the defendant trustees again denied plaintiff's request for benefits for additional reasons. First, defendant trustees determined that during the years 1964-1971 plaintiff received a salary, not wages pursuant to a collective bargaining agreement, while working for Sumark Sand, Inc. and Rettberg, Inc. Second, the trustees had no record of contributions made on behalf of plaintiff by Rettberg during plaintiff's service with that company. The trustees found that although some Rettberg employees were participants in the Pension Fund, plaintiff was not one of them. The trustees found a record of Rettberg making contributions on plaintiff's behalf only for a health and welfare plan. Third, the trustees determined that plaintiff had suffered a break in service between 1971 and 1977, a time at which plaintiff was "on a grievance." Motion at 8. The trustees found that no contributions were paid on plaintiff's behalf during that time.

The trustees' second review of plaintiff's application for benefits resulted in an 11-page opinion based on 130

pages of evidence. The court finds that the record made by the board of trustees reflects a reasonable explanation for the decision. Thus, their decision to deny plaintiff's application for pension benefits is not arbitrary and capricious. *Davis*, 887 F.2d at 693-95.

In his response brief plaintiff strongly objects to the trustees' determination that he was a supervisor, not an employee, from 1977 to 1985. Plaintiff vehemently argues that such a determination could not and should not have been made based on plaintiff's wife's deposition testimony illegally obtained in an unrelated 1983 lawsuit.

Even if the trustees improperly relied on the deposition to deny benefits, the court finds that there are additional, independent reasons supplied by the board of trustees to deny plaintiff's request for benefits.

STANDARD OF REVIEW

Under Rule 56(c) of the federal Rules of Civil Procedure, summary judgment may be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." A fact is "material" and precludes grant of summary judgment if proof of that fact would have (the) effect of establishing or refuting one of the essential elements of the cause of action or defense asserted by the parties, and would necessarily affect (the) application of appropriate principle(s) of law to the rights and obligations of the parties. (Citation omitted). *Kendall* v. *Hoover Co.*, 751 F.2d 171, 174 (6th Cir. 1984) (quoting Black's Law Dictionary 881 (6th Ed.

1979). The court must view the evidence in a light most favorable to the nonmovant as well as draw all reasonable inferences in the nonmovant's favor. *See United States* v. *Diebold, Inc.*, 369 U.S. 654, 655 (1962); *Bender* v. *Southland Corp.*, 749 F.2d 1205, 1210-11 (6th Cir. 1984).

The movant bears the burden of demonstrating the absence of all genuine issues of material fact. *See Gregg* v. *Allen-Bradley Co.*, 801 F.2d 859, 861 (6th Cir. 1986). The initial burden on the movant is not as formidable as some decisions have indicated. The moving party need not produce evidence showing the absence of a genuine issue of material fact. Rather, "the burden on the moving party may be discharged by showing — that is, pointing out to the district court — that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp.* v. *Catrett*, 477 U.S. 317, 325 (1986). Once the moving party discharges that burden, the burden shifts to the nonmoving party to set forth specific facts showing a genuine triable issue. Fed. R. Civ. P. 56(e); *Gregg*, 801 F.2d at 861.

To create a genuine issue of material fact, however, the nonmovant must do more than present some evidence on a disputed issue. As the United States Supreme Court stated in *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986),

> There is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the (nonmovant's) evidence is merely colorable, or is not significantly probative, summary judgment may be granted.

(Citations omitted). *See Catrett*, 477 U.S. at 322-23; *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). The standard for summary judgment

mirrors the standard for a directed verdict under Fed. R. Civ. P. 50(a). *Anderson*, 477 U.S. at 250. Consequently, a nonmovant must do more than raise some doubt as to the existence of a fact; the nonmovant must produce evidence that would be sufficient to require submission to the jury of the dispute over the fact.

Because there remain no genuine issues of material fact, defendants are entitled to summary judgment.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that defendants' motion for summary judgment is GRANTED.

/s/ PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

DATED: (2-3-92)

JUDGMENT

(United States District Court —
Eastern District of Michigan —
Southern Division)

(Dated February 3, 1992)

(CARL TAYLOR, SR., Plaintiff, v. CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND AND THE TRUSTEES THEREOF, Defendants — CIVIL ACTION NO. 88-74360; HONORABLE PAUL V. GADOLA, U.S. DISTRICT JUDGE)

This action came on for determination before the Court, Honorable Paul V. Gadola, District Judge, presiding, and the issues having been duly briefed and a decision having been duly rendered.

IT IS ORDERED AND ADJUDGED

That plaintiff take nothing, that the action be dismissed on the merits, and that the defendants recover of the plaintiff their costs of action.

JOHN P. MAYER, CLERK

By: /s/ _____,
Deputy Clerk

APPROVED:
PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

DATE: (2-3-92)

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CARL TAYLOR, SR.,
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CENTRAL STATES SOUTHEAST AND SOUTHWEST AREAS PENSION FUND AND THE TRUSTEES THEREOF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of Appeals correctly determined that the District Court should be affirmed in it's grant of summary judgment in favor of the Respondents pursuant to Federal Rule of Civil Procedure 56(c).

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Central States, Southeast and Southwest Areas Pension Fund v. Central Transport, Inc., 472 U.S. 559, 105 S.Ct. 2833, 86 L.Ed.2d 447 (1985) 11

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Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) 6, 9

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29 U.S.C. § 1001, *et seq.* 2

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

No. 93-499

CARL TAYLOR, SR.,

Petitioner,

v.

CENTRAL STATES SOUTHEAST AND SOUTHWEST AREAS PENSION FUND AND THE TRUSTEES THEREOF,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

A. The Parties

The Central States, Southeast and Southwest Areas Pension Fund ("Central States") is a Taft-Hartley Trust, administered, pursuant to the requirements of the Act, by an equal number of employer trustees and employee trustees. The Pension Fund covers over 450,000 participants and beneficiaries and is a Multiemployer Trust with participants in over 30 states. The Trustees of the Pension Fund have established a Pension Plan that provides for retirement pensions to employees who work in the Teamster Industry, pursuant to collective bargaining agreements that require their employer to make contributions on their behalf to the Pension Fund, and who reach the age and service requirements stated in the Plan for

the applicable pension benefits. (R. 49, Motion by Defendants for Summary Judgment, Nelson Aff., p. 3.) The Central States Pension Fund is subject to regulation by ERISA, the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*

Carl Taylor, Sr. (the Plaintiff below) is a Michigan resident who worked for various employers in the Detroit, Michigan area as a truck driver and has claimed a twenty year retirement pension from the Central States Pension Fund based upon his allegation that he was an "employee" as that term is defined in the Central States Pension Plan for the required period of time to earn the benefit. (R.1, Complaint, pp. 1 and 2.)

B. Background Facts and Proceedings Below

Carl Taylor, Sr. filed a Petition for a Writ of Certiorari and served a copy of the Petition (by mail) upon the Respondent on September 3, 1993. The Clerk of this Court returned 39 copies of the Petition to counsel for the Petitioner on September 17, 1993 because the Petition was not in proper form. The Petitioner refiled the Petition and sent three copies to the Respondent in an envelope postmarked September 24, 1993. The Petition was received by the Respondents on September 27, 1993. The Respondents' Opposition to the Petition is proper up to and including October 27, 1993.

The Central States, Southeast and Southwest Areas Pension Fund and the Trustees thereof were sued by Carl Taylor, Sr. on October 27, 1988 for relief under the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C. § 1001 *et seq.* challenging the Trustees' interpretation of their plan denying him a pension benefit.[1] Mr. Taylor's ERISA action was

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[1] Many of the relevant facts are accurately stated in the opinion of the Sixth Circuit and the District Court. *See* Petitioner's Appendix at pp. A-10 to A-12. Citation to Petitioner's Appendix will be made as "Pet. App. at p. ——". Facts appearing in the record

brought pursuant to 29 U.S.C. § 1132(a)(1)(B). (Pet. App. at p. A-6.) He claimed he qualified for a pension pursuant to the terms of the Central States Pension Plan Document, but that the Defendant acted arbitrarily and capriciously in denying his benefit. Mr. Taylor alleged that the Trustees' decision was based upon incompetent and unsubstantiated evidence. (R. 1, Complaint, pp. 2-9.)

When the Central States Pension Fund Trustees first denied Mr. Taylor's claim to a pension on July 16, 1986, they considered the deposition testimony of his wife taken in an unrelated 1983 collection action against C. R. Taylor Company, Inc. (both Mr. and Mrs. Taylor worked for C. R. Taylor Company, Inc.). (Pet. App. at A-7) and (R. 49, Defendants' Motion for Summary Judgment (Minutes) p. 2.) In the District Court Mr. Taylor filed a motion to bar the use of his wife's deposition testimony.[2] Mr. Taylor's wife's deposition testimony arose from the fact that the Pension Fund had filed an ERISA collection action against C. R. Taylor Company, Inc. for delinquent contributions. That lawsuit resulted in a default judgment. The company had no lawyer in the collection case so the Central States attorney called Mrs. Taylor (the bookkeeper) and asked her to be examined under oath to determine the correct amounts owed by the company for delinquent contributions. (R. 8, Defendants' Response to Plaintiff's Brief in Support of Motion to Bar Use of Deposition Testimony, p. 5.)

It was to the advantage of the company to determine which employees could properly participate in the Pension

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below, but not in the Circuit or District Court opinions, will be parenthetically cited as "(R. ——)."

[2] The deposition of Mrs. Taylor in the 1983 collection case showed that her husband was not eligible to participate in the Pension Fund for the years 1975 to 1985 because he was a supervisor, not an employee, of C. R. Taylor Co., Inc. (R. 49, Motion by Defendant for Summary Judgment with Brief, Ex. C., pp. 256-263)

Fund because contributions would only be owed for those employees. When it was later decided that Mr. Taylor could not participate in the Fund, C. R. Taylor Company, Inc. was given a credit for the contributions it had made on his behalf. (R. 8, Defendants' Response to Plaintiff's Motion to Bar Use of Deposition Testimony, p. 16.)

Although a Magistrate found on February 25, 1989 that the deposition of Mrs. Taylor was taken in violation of the Federal Rules of Civil Procedure, the Magistrate did not bar the use of the deposition testimony by the district court. (R. 12, Order, p. 2.) The Defendants filed an objection to the Magistrate's decision with the District Court (insofar as the Magistrate ruled that the deposition was taken in violation of the federal rules) pursuant to Federal Rule of Civil Procedure 72(a). No ruling was made on the objection. On September 5, 1989 the parties agreed to an order of dismissal and a remand of the case to the Trustees of the Pension Fund for a full *de novo* rehearing on the issue of the Plaintiff's entitlement to pension benefits. (R. 38, Stipulated Order.)

Mr. Taylor, accompanied by counsel, appeared before the Trustees in July of 1990. However, notwithstanding arguments made by Mr. Taylor and his attorney, the Trustees again denied his claim. When the Trustees conducted the 1990 *de novo* review they had before them all the evidence that had been presented during the first administrative appeals process in 1986 and also new evidence, including an affidavit from Mr. Taylor's wife recanting her deposition testimony and evidence that Mr. Taylor (prior to the years that he worked at C. R. Taylor Company, Inc.) did not earn sufficient contributory service in those years to qualify for the pension. The Trustees considered affidavits submitted on behalf of Mr. Taylor regarding his past work record, his Social Security records and Pension Fund records regarding contributions made on his behalf for his entire period of employment in the

Teamster Industry. (R. 49, Motion by Defendants for Summary Judgment, Nelson Aff., Ex. C (Minutes) pp. 1-11.)

After the Trustees denied Mr. Taylor's claim for a second time, he reinstated his district court case on December 18, 1990. Shortly thereafter the Defendants filed a Motion for Summary Judgment. The District Court, finding that the parties agreed that the Trustees of the Central States Pension Fund were vested with discretionary authority to construe the terms of the Plan, applied the arbitrary and capricious standard to review their 1990 decision denying Mr. Taylor a twenty-year pension. The District Court found that there were no genuine issues of material fact. Summary Judgment was granted in favor of the Defendants on February 3, 1992. (Pet. App. at pp. A-7 to A-11.)

The United States Court of Appeals for the Sixth Circuit on June 3, 1993 affirmed the District Court. The record clearly supported that Mr. Taylor did not earn the necessary years of contributions to qualify for the pension benefit he sought. The Sixth Circuit reviewed the record presented to the Trustees, the discretionary grants of authority to the Trustees to determine benefit claims and, viewing the evidence in the light most favorable to Mr. Taylor, found that the evidence raised no genuine issue of material fact that he earned the required number of contributory service credits to qualify for the pension and thus affirmed the District Court's grant of summary judgment for the Defendants. (Pet. App. pp. A-3 to A-5.)

SUMMARY OF ARGUMENT

Summary Judgment was properly granted in favor of the Respondents because there was no genuine issue of any material fact that the Trustees of the Pension Fund, when they denied the Petitioner's claim for a benefit, did not act arbitrarily and capriciously. Both courts below

reviewed the complete record presented to the Trustees when they made their final decision. The Trustees interpreted their Plan and resolved factual issues against the claims made by the Petitioner. In doing so the Trustees did not abuse their discretion.

REASONS FOR DENYING THE WRIT

The Petitioner cites as his sole ground for this Court to issue a writ of certiorari that he was denied his day in court when the District Court found that the Trustees were not arbitrary and capricious in denying his pension and thereby granting summary judgment in favor of the Respondents. The Petitioner argues that the affidavits he submitted corroborated his claim to a pension. He states that the Trustees declined to give credibility to his affidavits but instead relied upon other evidence (including the deposition testimony of his wife). (Pet. pp. 2-4.)

The Petitioner's arguments do not raise any special and important reasons for the granting of his petition. The decision of the Sixth Circuit Court of Appeals has not so far departed from the accepted and usual course of judicial proceedings so as to call for this Court's power of supervision.[3] The District Court correctly applied Federal Rule of Civil Procedure 56(c) in granting the Defendant's Motion for Summary Judgment. The District Court's application of the rule was consistent with applicable authority. *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2458, 91 L.Ed.2d 265 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 105 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). The Sixth Circuit did not err in affirming the grant of summary judgment. Both the District Court and the Circuit Court applied the correct substantive eviden-

[3] The Petitioner cites no authority so it is apparent he does not claim there is a conflict among the Courts of Appeals on any issue in this case.

tiary standard (i.e. a deferential review, the arbitrary and capricious standard) to a review of the decision of the Trustees. *Firestone and Rubber Co. v. Bruch,* 489 U.S. 101, 109 S.Ct. 948, 103 L.Ed.2d 80 (1989).

I. THE COURT OF APPEALS PROPERLY AFFIRMED THE GRANT OF SUMMARY JUDGMENT BY THE DISTRICT COURT

The Petitioner argues that he was denied his day in court by the grant of summary judgment because he was never permitted to bring in witnesses to support his claim that he was entitled to a twenty-year service pension from the Central States Pension Fund. He claims that the Trustees of the Pension Fund disregarded his affidavits and instead relied upon illegal and unsubstantiated evidence to deny his claim. (Pet. pp. 2-4.) But, while the Petitioner, in one breath complains that he was denied his day in court, in the next breath he argues that he submitted sufficient evidence to the Trustees which supported his entitlement to the pension benefit he sought. On one hand the petitioner says that he did not have a chance to prove his case but on the other hand he says that he did prove his case and the Trustees acted arbitrarily and capriciously in denying his appeal. (Pet. p. 4.)

In fact, the District Court properly applied Federal Rule of Civil Procedure 56(c) to grant summary judgment in favor of the Respondents. The District Court began its analysis with the proposition that the parties agreed that the Trustees, as fiduciaries of the Pension Fund, were invested with the necessary discretion to construe the terms of their benefit plan. (Pet. App. at p. A-7.) Thus, the District Court was presented with a case where the parties agreed that a deferential standard of review must be applied to the Trustees' decision. The analysis of the District Court considered the fact that Mr. Taylor needed 20 years of service credit (including 10 years of contributory service) to qualify for a twenty-

year service pension. (Pet. App. at p. A-8.) There were two hearings on Mr. Taylor's eligibility by the Trustees. The second hearing was a *de novo* review of all the evidence adduced after Mr. Taylor filed his lawsuit (including a review of Mr. Taylor's entire contribution history). The Trustees found that Mr. Taylor could not qualify because contributions were not submitted on his behalf for the required periods of time, he suffered a break in service, and he was not eligible to participate in the Fund while working as a supervisor at C. R. Taylor Company, Inc. The Trustees' decision was based upon a review of the entire record, including not only the evidence presented by Mr. Taylor, but also the contribution records maintained by the Pension Fund and Social Security records. The District Court found that there were independent reasons supplied by the Trustees to support their decision (even without considering the alleged improper deposition testimony of the Plaintiff's wife) and that there was no genuine issue of material fact regarding Mr. Taylor's qualifications for a pension. (Pet. App. at p. A-11.)

The Sixth Circuit affirmed the District Court. It noted that the Trustees supported their decision to deny Mr. Taylor's claim by a review of their own contribution records and Social Security records which showed that Mr. Taylor did not earn the required service to support his eligibility for the benefit. (Pet. App. pp. A-3 to A-4.) The Circuit Court found that Mr. Taylor failed to satisfy his burden. The Trustees considered his evidence and were unpersuaded. (Pet. App. p. A-4.) The Sixth Circuit also observed that the Trustees issued an eleven-page report (the minutes) of their meeting where Mr. Taylor's case was considered. The minutes contained detailed explanations of their decision with respect to each question of fact. (Pet. App. p. A-4.) The exact record that was presented to the Trustees when they denied Mr. Taylor's claim in 1990 was presented to both the District Court

and the Sixth Circuit. The entire record is contained in the Joint Appendix filed with the Sixth Circuit. That record starts with 11 pages of minutes. (R. 49, Motion by Defendant for Summary Judgment with Brief, pp. 189-199.) Attached to the minutes (and presented to the Trustees) were 164 pages of documentary evidence. The documentary evidence included relevant correspondence (including correspondence from attorneys representing Mr. Taylor), an analysis of Mr. Taylor's contributory service with the Pension Fund, a copy of his wife's deposition, his pension application records (including his Social Security records), and the affidavits and evidence submitted by his attorneys on behalf of his appeal. (R. 49, Motion by Defendant for Summary Judgment with Brief, pp. 200-364.) The minutes prepared by the Trustees to explain their ruling noted that, not only did Mr. Taylor not establish his entitlement to benefits by proving that he has earned a qualifying amount of service credit prior to his employment with C. R. Taylor Company, Inc. but, even if he had earned enough service credit, no contributions were made on his behalf between 1971 and 1977 and he thus suffered a break in service. Additionally, the Trustees confirmed their previous finding that he was not a bona fide employee of C. R. Taylor Company, Inc. for the years after 1977 because he was a supervisor and not eligible to participate in the Pension Plan. (R. 49, Motion by Defendants for Summary Judgment with Brief, Nelson Aff., Ex. C, pp. 189-199.)

The decisions of the District Court and the Circuit Court are consistent with the rulings in *Celotex v. Catrett*, *Anderson v. Liberty Lobby*, and *Matsushita v. Zenith*. The courts below applied the correct evidentiary standard (i.e. the arbitrary and capricious deferential review) based upon the parties agreement and the discretion given to the Trustees to decide benefit claims.[4] The courts below were

[4] The relevant provisions of the Central States Trust Agreement granting the Trustees discretionary authority to decide benefit

properly guided, in their determination of whether a genuine factual dispute existed, by the substantive evidentiary standard that applied to the case before them. *Anderson v. Libberty Lobby,* 477 U.S. at 255. Since Mr. Taylor would bear the burden of proof at trial to prove that the Trustees were arbitrary and capricious, the courts below thus properly found that there was no genuine issue as to any material fact in that regard because Mr. Taylor could not prove that the Trustees were arbitrary and capricious in rejecting his claim based upon the evidence submitted to them. The entire record that was before the Trustees when they made their final decision was before both the District Court and the Sixth Circuit so each court could review exactly what was presented to the Trustees. The Sixth Circuit noted that when the Trustees conducted a *de novo* review of Mr. Taylor's application on August 30, 1990 they reviewed all the allegations in his complaint and checked their own records (as well as the Social Security records) in order to determine Mr. Taylor's employment status for all the years of service claimed on his application. The court observed that the Trustees also examined the evidence submitted by Mr. Taylor and found that Mr. Taylor's case was considered, "with detailed explanations of their decision with respect to each question of fact." (Pet. App. p. A-4.)

The District Court found that the Trustees made findings concerning the years that Mr. Taylor worked for other companies prior to working for C. R. Taylor Company, Inc. and that the Fund records showed that Central

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claims are set out in full in the Joint Appendix. In summary, the Trustees of the Central States Pension Fund have authority to adopt rules and regulations for the operation and administration of the Funds and have the power to construe the provisions of the Trust Agreement and benefit plan and are vested with discretionary and final authority in making decisions regarding claims for benefits by participants and beneficiaries. (R. 49, Motion by Defendants for Summary Judgment with Brief, Nelson Aff., pp. 167-168 and Ex. B, pp. 177-179)

States had no record of contributions for the relevant period of time. The District Court also noted that the Trustees had determined that Mr. Taylor suffered a break in service for the years 1971 through 1977 and that the Trustees' record contained a reasonable explanation for their decision. (Pet. App. pp. A-8 to A-9.)

In the situation where Mr. Taylor is unable to make a showing sufficient to establish the existence of an essential element to his case there is no genuine issue as to any material fact and the Pension Fund was entitled to judgment as a mater of law. *Celotex v. Catrett*, 477 U.S. at 323.

The Petitioner does not contend that he did not have the opportunity to gather and submit evidence. In fact, he argues that he submitted his evidence, including affidavits and arguments and should have prevailed based on that evidence. (Pet. p. 4.) The Petitioner cannot argue that the Trustees lacked the discretion to interpret the Plan. The parties agreed that they had the necessary discretion and the plan documents support that conclusion.

II. A DEFERENTIAL STANDARD OF REVIEW WAS PROPERLY APPLIED TO THE TRUSTEES' DECISION

From the beginning of this litigation, the Petitioner has recognized that a deferential standard was proper to a review of the Central States Pension Fund Trustees' decision. His complaint only alleged that the Trustees were arbitrary and capricious in denying his claim. The parties agreed that the Trustees were given discretionary authority to determine eligibility for benefits and to construe the terms of their plan. Because the Trustees had the requisite discretionary powers, trust principles make a deferential standard of review appropriate to their decision. *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. at 110, citing *Central States, Southeast and South-*

west Areas Pension Fund v. Central Transport, Inc., 472 U.S. 559, 105 S.Ct. 2833, 86 L.Ed.2d 447 (1985). Because a deferential review of the Trustees decision denying Mr. Taylor's claim was appropriate, the courts below properly applied the correct substantive law to determine whether there was any factual dispute raised as to the question of whether the Trustees acted arbitrarily and capriciously in denying Mr. Taylor's claim to a pension. There is no genuine factual issue in that regard. In effect the Petitioner does nothing more than suggest that the Trustees should have reached a different conclusion than they reached because his affidavits should have convinced them of the merits of his position. The Petitioner concludes, because the Trustees did not rule in his favor, that the District Court should not have granted summary judgment because he was denied his day in court. However, he fails to point out any genuine issue of material fact as to whether the Trustees acted arbitrarily and capriciously, other than his vague claim that the Trustees should have ruled in his favor based upon his affidavits.

Both the District Court and the Circuit Court noted that the Trustees had a reasonable basis for their decision considering the Fund's own records and the Social Security records that supported the denial of Mr. Taylor's claim. Mr. Taylor simply raised no issue of fact indicating that he had earned the required years of contributions to qualify for the pension. The fact of the matter is that both the District Court and the Sixth Circuit recognized that the Trustees reviewed all the facts and arguments in the case. The Trustees, as fact finders, chose not to believe Mr. Taylor's evidence. They did not rely upon his affidavit. Instead the Trustees chose to rely upon their own contribution records and Social Security records. The Sixth Circuit found that the Trustees' reliance upon those records, rather than upon deficient affidavits submitted by Mr. Taylor, was not arbitrary and capricious. (Pet. App. p. A-5.)

The deposition testimony of Mr. Taylor's wife is a non-issue. The record is clear (it is even emphasized by the Petitioner) that the Trustees conducted a full *de novo* rehearing in 1990 of Mr. Taylor's entitlement to benefits. The second hearing was conducted long after the deposition in question was taken. The second hearing was conducted after her statement recanting the deposition. (Pet. p. 1-4 and Pet. App. pp. A-8 to A-9.) The record in this case does not come close to supporting that Mr. Taylor earned the required amount of credited service to qualify for the pension. The record contains a reasonable basis for the Trustees' decision and the Sixth Circuit recognized that reasonable basis. Because of that finding there is no genuine issue as to any material fact and summary judgment was appropriate. (Pet. App. pp. A-4 to A-5.)

CONCLUSION

For the foregoing reasons, Respondents submit that the petition for a writ of certiorari be denied.

Respectfully submitted,

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